

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**KEITH KOOI dba KOOI  
HONEYWAGON & EQUIPMENT  
RENTAL  
Sioux County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2011-AFO-10

TO: Keith Kooi  
Kooi Honeywagon & Equipment Rental  
2621 400<sup>th</sup> Street  
Sioux Center, Iowa 51250

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Keith Kooi dba Kooi Honeywagon & Equipment Rental for the purpose of resolving issues regarding failure of Kooi Honeywagon & Equipment Rental and its employees to have proper manure application certification. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Jeff Prier, Field Office 3  
Iowa Department of Natural Resources  
1900 N. Grand Gateway North, Suite E17  
Spencer, Iowa 51301  
Phone: 712/262-4177

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Height, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits

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issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Keith Kooi owns and operates Kooi Honeywagon & Equipment Rental. Kooi Honeywagon & Equipment Rental is a commercial manure service. The business has several application tanks, tractors, pumps, and loadout stands.

2. On November 5, 2010, Jeff Prier, DNR Field Office 3 environmental specialist, conducted a manure applicator inspection of Kooi Honeywagon & Equipment Rental. At the time, Bill Kooi, Dan Vonk, Rob Donlin, and Brian Bransten were hauling manure from Mr. Bransten's swine confinement site located at 410<sup>th</sup> Street, Sioux Center, Iowa. Bill Kooi, Kooi Honeywagon & Equipment Rental's representative, stated that he was properly certified but did not have his certification card with him. Dan Vonk stated that he was properly certified under Kooi Honeywagon & Equipment Rental, but did not have his current certification card with him. Rob Donlin stated that had recently been hired by Brian Bransten and was under the supervision of Mr. Bransten. Brian Bransten stated he was properly certified as a confinement site applicator.

3. Following the inspection, Mr. Prier reviewed the DNR's files to verify the certifications. Mr. Bransten was properly certified. The certification for Kooi Honeywagon & Equipment Rental and its employees, Mr. Kooi and Mr. Vonk, had expired on March 1, 2010.

4. On November 8, 2010, Mr. Prier spoke with Keith Kooi on the telephone. Mr. Kooi stated he thought he had submitted the applications during the summer of 2010. Following review of his files, Mr. Kooi determined that the applications had not been submitted. The applications for the business and its employees were submitted November 10, 2010.

5. On November 8, 2010, DNR issued a Notice of Violation letter to Keith Kooi for the violations discovered as a result of the November 5, 2010 inspection. The letter included the violations of failing to be properly certified for manure application. The letter indicated the matter was being referred for further enforcement.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

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2. Iowa Code section 459.314A prohibits a person from engaging in the business of a commercial manure service unless the DNR issues a commercial manure service license to the person. 567 IAC 65.1 defines a commercial manure service as a sole proprietor or business association engaged in the business of transporting, handling, storing, or applying manure for a fee. During Mr. Prier's investigation it was determined that Keith Kooi dba Kooi Honeywagon & Equipment Rental was not a licensed commercial manure service. The above-mentioned facts indicate a violation of this provision.

3. Iowa Code section 459.315(1) states that a person shall not act as a commercial manure service representative unless the person is certified. Iowa Code section 459.315(2) states that a person who is required to be certified as a commercial manure service representative must be certified each year. 567 IAC 65.1 defines a commercial manure service representative as a manager, employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service. During Mr. Prier's investigation it was determined that Bill Kooi and Dan Vonk, employees of Keith Kooi dba Kooi Honeywagon & Equipment Rental, were not properly certified to be handling manure. The above-mentioned facts indicate violations of this provision.

### V. ORDER

THEREFORE, the DNR orders and Keith Kooi dba Kooi Honeywagon & Equipment Rental agrees to do the following:

1. Keith Kooi dba Kooi Honeywagon & Equipment Rental shall comply with manure applicator certification requirement in the future; and
2. Keith Kooi dba Kooi Honeywagon & Equipment Rental shall pay an administrative penalty of \$3,500.00, within 30 days of the date the Director signs this administrative consent order.

### VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing

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the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,500.00. The administrative penalty is determined as follows:

Economic Benefit – Keith Kooi dba Kooi Honeywagon & Equipment Rental saved time and money by not having the business and its employees properly certified to apply manure. He delayed the expenses of the applicator fees. The certification fees were due in March 2010 and it is likely the business and its employees took other application jobs without the proper certification. Since the business and its employees were not properly certified, they should not have been taking other jobs. An estimated economic benefit of \$500.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The manure applicator certification program is an important component of the animal feeding operation regulations. The program ensures that manure is transported and applied properly. Keith Kooi dba Kooi Honeywagon & Equipment Rental's failure to be properly certified and failure to ensure the employees are properly certified threaten the integrity of the water quality program. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Keith Kooi dba Kooi Honeywagon & Equipment Rental has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. The manure applicator certification program and its requirements have been widely publicized throughout the animal feeding industry. Therefore, \$1,000.00 is assessed for this factor.

## **VII. WAIVER OF APPEAL RIGHTS**

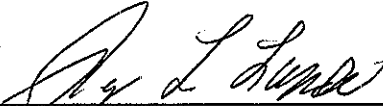
This administrative consent order is entered into knowingly and with the consent of Keith Kooi dba Kooi Honeywagon & Equipment Rental. For that reason Keith Kooi dba Kooi Honeywagon & Equipment Rental waives the right to appeal this administrative consent order or any part thereof.

## **VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an

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administrative order or referral to the Attorney General to obtain injunctive relief  
and civil penalties pursuant to Iowa Code section 455B.191.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 25<sup>th</sup> day of  
April, 2011.

  
\_\_\_\_\_  
Keith Kooi

Dated this 20 day of  
April, 2011.

No facility ID#; Kelli Book, Jeff Prier at Field Office 3, EPA, VIII.D.4